IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 46 of 2000.

Judgment reserved on 31.10.2006

Date of decision 14.11.2006

B.D. Mandhotra **…Petitioner.**

Versus

State Bank of India & others **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner: **Mr. Rajiv Sharma, Sr. Advocate, with Mr. Yogesh Kumar Chandel, Advocate.**

For respondents : **Mr. K.D. Sood, Advocate.**

Surjit Singh, Judge

By way of the present writ petition, the petitioner has sought the following reliefs:-

(i) Order dated 26.3.1999 (Annexure-PK) of the disciplinary authority, thereby removing the writ petitioner from service as Deputy Manager (M.M.G.S. II) and order dated 17.1.2000 (Annexure-PM) of the

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Whether reporters of Local Papers may be allowed to see the Judgment?

Appellate Authority, thereby rejecting the appeal of the writ petitioner against the order dated 26.3.1999 (Annexure-PK), be quashed and set aside;

(ii) Respondents be directed to permit the petitioner to discharge his duties as Deputy Manager (M.M.G.S. II) in State Bank of India, Zonal Office, Shimla (HP);

(iii) The respondents may be directed to pay his salary from the date of removal from service and to pay arrears thereof along-with interest at the rate of 18% per annum;

(iv) The respondents may also be directed to give all consequential benefits like seniority, promotion etc. to the petitioner as if he has not been removed from service;

2. The petitioner was employed as Deputy Manager (M.M.G.S. II) with the State Bank of India. He was posted as Branch Manager at Sera Branch from July 1994 to July 1996. During this period he was alleged to have committed a number of acts of misconduct for which his explanation was called and the explanation submitted by him having not been found satisfactory, he was charge-sheeted. Following three charges were framed against him:-

> "**Charge No. I**
>
> You violated Bank's laid down instructions in regard to sanction of loan to your relative, self and others.
>
> **Charge No. II**
>
> You misutilised your official position in granting advance to certain borrower, in excess of your discretionary power. You also did not report the irregularity to your Controlling Authority.

Charge No. III

You committed various acts of omission and commission while handling certain transactions, thereby tarnishing Bank's image.

3. Detail of allegations, on which the aforesaid three charges were based, were attached with the charge-sheet.

4. Reply to the aforesaid charges was filed by the writ petitioner. Thereafter a regular inquiry was conducted.

5. The Inquiring Authority, after holding inquiry, submitted report, per which charge-I and charge-III and all the allegations, on which those charges were based, stood fully proved. Charge-II was held to be partly proved. Copy of the inquiry report was supplied to the writ petitioner and he was required to submit his representation, if any, against the report. He submitted the representation and took the same stand as he had taken in reply to the charge-sheet. The Disciplinary Authority then passed the order dated 26.3.1999 (Annexure-PK) for the removal of the writ petitioner from service. The writ petitioner filed an appeal against the aforesaid order. The appeal has been dismissed by the Appellate Authority, vide order dated 17.1.2000 (Annexure PM).

6. The orders of Disciplinary Authority and the Appellate Authority, Annexures PK and PM, respectively, have been assailed on the following grounds:-

(a) The orders are illegal, arbitrary, unjustifiable, discriminatory and thus violative of Aritcles 14 and 16 of the Constitution of India;

(b) Penalty is harsh and excessive;

(c) Inquiry had not been conducted in accordance with the mandatory rules and the same has caused prejudice to the petitioner and resulted in grave mis-carriage of justice;

(d) Findings of the Inquiring Authority are not supported by evidence led in the course of inquiry and are based on surmises, conjectures and extraneous material.

(e) Inquiry was ordered without considering the reply to the charge-sheet Annexure-PB, submitted by the writ petitioner;

(f) No financial loss had been caused to the Bank by the alleged acts of misconduct of the petitioner;

(g) Order of penalty was passed without taking into consideration the representation Annexure-PJ, submitted by the petitioner, thereby challenging the findings of the Inquiring Authority. The Appellate Authority has also not considered the submissions made by the writ petitioner in the grounds of appeal Annexure-PL and has passed the order dismissing the appeal (Annexure-PL) in a mechanical manner;

(h) No show cause notice of the proposed penalty was issued before passing the impugned order of removal from service (Annexure-PK);

(i) Action has been taken against the writ petitioner under the State Bank of India Officers Service Rules, which came into force on and with effect from 15.7.1996, whereas the alleged acts of misconduct were committed prior to the aforesaid date, and hence the aforesaid rules were not applicable.

7. Respondents in their reply have denied the allegations made in the writ petition and stated that inquiry was conducted in accordance with the established procedure and due opportunity was granted to the writ

petitioner to defend himself. It has also been denied that the inquiry report is not supported by evidence or that the Disciplinary Authority and the Appellate Authority have passed the impugned orders without application of mind.

8. Learned counsel for the writ petitioner submitted that as a matter of fact the material made available to the Inquiring Authority and the evidence led before him, proved that the writ petitioner was guilty of only a few minor lapses like granting loan to his mother, increasing his cash credit limit, allowing over-drawl beyond the maximum limit of cash credit facility to a customer without clearance from superior authorities and that the material and evidence placed before the Inquiring Authority do not prove any of the other allegations. He submitted that the minor lapses, which have been proved, do not make out a case for imposition of major penalty of removal from service. He read out the whole of the inquiry report in support of his aforesaid submissions.

9. Charge-I consists of three separate allegations. The first one pertains to the grant of loan of Rs.6,500/- by the writ petitioner in favour of his mother, without clearance from the controlling authority. The writ petitioner admits the allegation, but his plea is that he was unaware of the instructions that clearance of the controlling authority was required. The Inquiring Authority has held that the plea of the writ petitioner is not reasonable and so it has held that the writ petitioner is guilty of having sanctioned the loan in favour of his mother without clearance from the controlling authority. The Inquiring Authority has further held that the address of the person, who allegedly sold the cattle to the mother of the writ petitioner, was also fake and that the certificate of veterinary doctor could

also not be believed. Another irregularity held to be proved in the case is the non-insurance of the cattle.

10. Learned counsel submitted that the loan had been repaid long before the disciplinary proceedings were initiated against the writ petitioner and this indicated that he did not have any dishonest intention and that neither any loss had been caused to the Bank nor did the writ petitioner make any gain out of the transaction. He urged that even the Bank does not allege that the petitioner has made any wrongful gain or caused any wrongful loss to it.

11. The respondents do not deny that no monetary loss has been caused to the Bank, on account of the aforesaid act of the writ petitioner in granting the loan, but their contention is that the petitioner granted the loan in favour of his mother, in violation of the instructions that loan to close relatives cannot be granted without clearance from the controlling authority and also there were some irregularities and discrepancies in the processing of the case. The violation of instructions cannot be said to be so serious an act of misconduct as to entail the removal of the petitioner from service.

12. Second allegation, included in charge-I, is regarding enhancement of his own limit by the petitioner from Rs.69,300/- to Rs.76,500/-, without obtaining administrative clearance from the controlling authority. The writ petitioner admits that he increased his limit, but it was on account of the value of the security, i.e. NSCs. having gone up because of the accrual of interest on NSCs. This allegation also stands proved, but this too is not so serious as to invite major penalty.

13. Third allegation, forming part of charge-I, is that a borrower, named Mohinder Singh, who had taken loan for a motor vehicle, had not

been regular in repayment of the loan and in spite of that the writ petitioner loaned him another sum of Rs.7,957/- for the repair of the said vehicle and that though a Banker's cheque was issued for the aforesaid amount of loan, the borrower himself was allowed to encash that cheque.

14. The writ petitioner's defence was that the loanee had kept two FDRs of Rs.68,000/- as security for the loan and that in his anxiety not to part with the amount of the FDRs, he gave demand loan to said Mohinder Singh against the security of the aforesaid FDRs, without opening a new account and debited the money in the vehicle loan account. The Inquiring Authority has though held that the charge is proved, yet he has noted that the request of the borrower had been acceded to in an irregular manner and the irregularity was then not reported to the controlling authority. The report itself suggests that this is a case of irregularity only and so this allegation is also not so serious as to entail the loss of service.

15. Charge-II consists of only one allegation, viz. allowing one Shri K.L. Nanda, holder of Current Account Nos. 130 and 131 to over-draw in excess of the sanctioned limit. The sanctioned limit in respect of each of the two accounts was Rs.3,60,000/-. The petitioner allowed him to draw up to Rs.4,01,600/- in one account and Rs.4,20,000/- in another account and this over-drawl, which was irregular, was not reported to the controlling authority. The Inquiring Officer has held that the writ petitioner had in good faith allowed over-drawl, but he is guilty of the irregularity of not reporting the over-drawl to the controlling authority. That means this is also a case of only an irregularity of not reporting the over-drawl to the controlling authority. Admittedly the accounts stood regularized even before the proceedings were initiated against the petitioner.

16. Charge-III consists of four allegations. The first one is that two Banker's cheques for Rs.1200/- and Rs.1460/- were issued by debiting Account SSI-3, in the name of one Subhash Chand. The account holder was paid the cash against the cheques, while the purpose of the debit was indicated as 'interest recovery'. The writ petitioner pleaded that the cheques were issued on the request of the account holder to enable him to meet his business needs and that words 'interest recovery' were written by mistake in the vouchers and the mistake was corrected at that very moment by scoring out the said words. The Inquiring Authority has held that the charge stands proved, because the issue vouchers are not signed by the borrower, the debit vouchers with words 'interest recovery' written thereon are not traceable in the record of the Branch and the letter from the account holder is undated and its contents show that it was written after the completion of the transaction.

17. The debit vouchers, Exts. P-22 and P-26 (photo copies), which are part of the inquiry proceedings, probabilize the plea of the writ petitioner that it was by mistake that words 'interest recovery' had been written in these two vouchers and that the same were scored out immediately. No evidence was led from the side of the respondents indicating that these words had been scored out at some subsequent stage nor is it their allegation that scoring out of these words had taken place later on and not at the time of their preparation. Thus, the finding of the Inquiring Authority qua this allegation is not based on evidence and the material on record. More over, the account holder does not dispute the debiting of his account. Instead there is a letter from him, as per finding of the Inquiring Authority, for the issuance of two cheques in his favour. No doubt the

Inquiring Authority has expressed the opinion that the writing is prepared after the completion of the transaction, but there is no evidence, not even unproved material in support of such opinion. Further more, no loss is alleged to have been occasioned to the Bank on account of the issuance of these two Banker's cheques.

18. Coming to the next allegation forming part of charge-III, it is alleged that a sum of Rs.252/- was required to be refunded to Shri Udham Singh, holder of ATL Account No. 55, on account of insurance premium, by way of giving him credit in his aforesaid account, but the money was shown to have been paid in cash and the borrower denied having received the said amount of money. The finding of the Inquiry Officer with respect to this allegation is that the same stands proved. The report shows that in fact there was no evidence or material available with the Inquiring Authority to record such a finding. The only fact that was substantiated by the material on record was that the amount of Rs.252/-, on account of refund of insurance premium, had been paid in cash to Udham Singh. The Inquiry Officer has observed that the thumb impression on the purported receipt, furnished by Udham Singh, is not attested by any witness. The writ petitioner submitted a writing Ext. D-6 by Udham Singh, wherein it is admitted that the money had been received by him in cash. The writing has been disbelieved by the Inquiry Officer with the observation that it had been obtained after three years.

19. As a matter of fact, the presenting side ought to have examined Udham Singh to prove the allegation that the money had not been paid to him. Non-examination of this man by the presenting side was required to be used as a circumstance against the presenting side and

presumption was required to be drawn that had he been produced as a witness by the presenting side, he would not have supported the allegation. The Inquiry Officer not only did not draw such a presumption against the presenting side, but also gave a finding against the petitioner that he had not paid the money to the above-named person and that too when the petitioner produced a writing furnished by that man that he had received the money. The approach of the Inquiry Officer is absolutely unwarranted and rather contrary to the well-known principles underlying the law of evidence. The only thing that can be said to have been established with regard to this allegation is that the petitioner instead of crediting the amount of Rs.252/- in the account of Udham Singh, paid it in cash to him and this is only an irregularity, which has caused no pecuniary loss to the Bank.

20. Next allegation included in charge-III is that a sum of Rs.304/- had been shown to have been refunded in cash to the holders of ATL Account Nos. 94 and 91, named Nirmla Devi and her husband Hari Ram Sharma, instead of being credited into their aforesaid accounts and that the above-named account holders had denied the receipt of the payment. The presenting side did not examine Nirmla Devi or her husband Hari Ram Sharma. The Inquiry Officer has observed that the signature of Nirmla Devi on the purported receipt does not tally with her admitted signatures, available in the record of the Branch. The Inquiry Officer could not have acted as an expert in the matter. In any case, even an expert on the subject feels it difficult rather impossible to express any definite opinion unless he examines the questioned and the standard writings with the aid of equipment available in his laboratory. The petitioner produced writings Exts. D-8 and D-9, purporting to be by Nirmla Devi and her husband Hari

Ram Sharma, wherein they admitted that they had received the money. But the Inquiry Officer rejected the said writings holding that the signatures thereon did not tally with the signatures on the complaint and the signatures on the complaint have been assumed to be genuine by the Inquiry Officer, because the same, according to him, tally with the admitted signatures of the account holders, available in the record of the Branch. As a matter of fact, Nirmla Devi and Hari Ram Sharma were required to be examined as witnesses of the presenting side to prove the allegation and they having not been examined, presumption ought to have been drawn against the presenting side that had they been examined, they would not have supported the allegation.

21. The fourth allegation, included in charge-III, is that a man, named Sansar Chand, had deposited for a fixed term a sum of Rs.1.00 lac against STDR No. 484000, dated 1.1.1996. When this STDR was retired, a sum of Rs.1,02,600/- was credited in his Savings Bank Account and Rs.415/- were shown to have been paid to him in cash, but Sansar Chand denied having received any money in cash. The petitioner produced a writing Ext. D-7, purporting to be by said Sansar Chand, wherein he admitted having received the money in cash. It appears that Sansar Chand was also examined as a witness and in his deposition he denied having made complaint that he had not been paid Rs.415/- in cash. The Inquiry Officer has disbelieved the deposition and the writing Ext. D-7 with the observation that the tactful denial of the complaint by Sansar Chand keeps the gravity of the allegation intact. He has not given a definite finding that the allegation is proved. His observation that “gravity of allegation remains intact” cannot be construed as a finding that the allegation stands proved,

though in the concluding sentence he has held that the allegation stands proved. The finding is contrary to the evidence on record.

22. The Hon'ble Supreme Court in **Narinder Mohan Arya vs. United India Insurance Co. Ltd. and others,** [2006 SCC (L&S) 840] has held that the proceedings of departmental inquiry are quasi criminal in nature. It has further been held that the High Court, while exercising its writ jurisdiction, has the power to examine as to whether the evidence adduced before the Inquiry Officer had nexus with the charge and could or could not lead to the guilt of the employee. It has also been held that suspicion or presumption cannot take the place of proof even in a domestic inquiry. Further it has been held that the writ court is entitled to interfere with the findings of the fact of any Tribunal or Authority in certain circumstances.

23. Again, in **M.V. Bijlani vs. Union of India and others,** [2006 SCC (L&S) 919] it has been held by the Hon'ble Supreme Court that disciplinary proceedings being quasi-criminal in nature, there should be some evidence to prove the charge. It has further been held that though in departmental proceedings charge is not required to be proved beyond reasonable doubt as in a criminal trial, the Inquiry Officer must arrive at the conclusion that there has been preponderance of probability to prove the charges on the basis of material on record. It has also been held that the Inquiry Officer cannot shift the burden of proof or reject the relevant testimony of the witnesses on surmises and conjectures or taking into consideration the irrelevant facts.

24. In the light of the law laid down by the Hon'ble Supreme Court in the aforesaid two judgments, findings of the Inquiring Authority with regard to allegations second, third and fourth of charge-III to the extent that

the money was not paid by the writ petitioner to the persons named in those allegations, being not only not warranted by the material on record but even being contrary to the material on record, need to be set aside.

25. The net result of the above discussion is that what stands proved against the writ petitioner is that he committed the following lapses / irregularities, while working as Branch Manager at Sera Branch from July 1994 to July 1996:-

(i) He sanctioned loan of Rs.6,500/- in favour of his mother without obtaining clearance from his controlling authority and the loan was disbursed without completing the codal formalities like obtaining the photograph of the loanee, verifying the address of the seller of the cattle for the purchase of which the loan was sanctioned and without verifying the genuineness of the veterinary doctor's certificate, which appeared to be suspicious;

(ii) Enhanced his own limit from Rs.69,00/- to Rs.76,500/- without obtaining clearance from his controlling authority.

(iii) He granted loan of Rs.7,957/- for the repair of the vehicle in favour of Mohinder Singh, in spite of the fact that he was irregular in repayment of the loan, taken by him for the purchase of vehicle;

(iv) He allowed over-drawl in excess of the overdraft limit to a customer and did not report the over-drawl to his controlling authority;

(v) He committed an irregularity of making payment of Rs.252/- in cash, on account of refund of insurance premium to one Udham Singh, instead of crediting the amount to his loan account;

(vi) He committed the irregularity of payment of Rs.304/- in cash to Nirmla Devi and her husband Hari Ram Sharma, on account of refund of

insurance premium, instead of making credit entries in their accounts for the aforesaid amount.

26. It is not denied by the respondents that no pecuniary loss has been occasioned to the Bank on account of the aforesaid acts of omission and commission on the part of the writ petitioner. Rather it is the admitted case that the loan, sanctioned by the petitioner in favour of his mother, had been repaid before the proceedings were initiated. The loan given for repair of vehicle to Mohinder Singh, stood repaid and not only that even the account of loan taken for the purchase of vehicle, had been regularized. Amounts, drawn in excess of the over-draft limit by a customer, had been repaid and all these repayments and regularizations took place before the initiation of the departmental proceedings against the writ petitioner.

27. The aforesaid acts of omission and commission, no doubt, come within the purview of misconduct, but they are not so serious as to entail the extreme penalty of removal from service. Regarding the allegation of payment of loan to his mother, even the Appellate Authority, while dealing with the submission of the writ petitioner that the penalty was too harsh for the alleged acts of misconduct, has observed that this is not the only basis for inflicting the punishment of removal from service and that other serious allegations / charges have been considered before visiting him with the punishment and that the punishment has been inflicted by taking into account all the lapses, committed by the writ petitioner. This observation of the Appellate Authority is suggestive of the fact that had there been the sole allegation that the writ petitioner had sanctioned loan in favour of his mother, the penalty of removal from service would have been set aside by it being disproportionate to the allegation. What has been

found by this Court, on scrutiny of the inquiry report and the material that was made available to the Inquiring Authority, is that the writ petitioner committed some irregularities, as listed hereinabove, and none of the proved irregularities is more serious than the sanctioning of loan by the writ petitioner in favour of his mother. Had the Appellate Authority examined the report of the Inquiring Authority in the light of the evidence adduced in the course of inquiry proceedings in the manner this Court has hereinabove, it would have also concluded that only the aforesaid irregularities were proved and then in view of its aforesaid observation, the Appellate Authority would have, in all probabilities, accepted the plea that the punishment was disproportionate to the proved acts of misconduct and consequently set aside the major penalty of removal from service and imposed some other penalty not resulting in rendering the writ petitioner unemployed.

28. In the light of what has been stated hereinabove, I have no doubt in my mind that the acts of misconduct, as have been found to be proved by this Court, are not so serious as to invite the penalty of removal from service or any other penalty which may have the effect of his ceasing to be in the service of the respondents. The Hon'ble Supreme Court in **Kailash Nath Gupta vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and others,** [(2003) 9 SCC 480] has observed that though the power of interference with the quantum of punishment is extremely limited, yet when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-consideration or even in an appropriate case, to shorten the litigation, indicate the punishment to be awarded. It is in view of this precedent of the Hon'ble Supreme Court that it has been indicated hereinabove that the acts of

misconduct, found to be proved against the writ petitioner, do not call for a punishment which may result in his ceasing to be in the service of the respondents.

29. As an upshot of the above discussion, the writ petition is allowed. The orders dated 26.3.1999 (Annexure-PK) of the disciplinary authority imposing the penalty of removal from service of the writ petitioner and the order dated 17.1.2000 (Annexure-PM) of the Appellate Authority dismissing the appeal against the aforesaid order of the disciplinary authority, are set aside and quashed. The disciplinary authority is directed to re-consider the issue of imposition of penalty upon the writ petitioner, taking into account only those acts of mis-misconduct (irregularities) which have been held by this Court as proved against the petitioner and also the indication given hereinabove that a penalty, which may result in the writ petitioner ceasing to be an employee of the respondents, is not to be imposed.

30. The writ petition stands disposed of accordingly.

November 14, 2006 (BC) **(Surjit Singh)**
Judge